

PUBLIC LAW BOARD NO. 4338

PARTIES) UNION PACIFIC RAILROAD COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

1. The discipline (30 day suspension) assessed Section Foreman J. Otero, Jr. for alleged violation of various company rules as indicated in Mr. G. D. Altenburg's letter of June 9, 1989, was arbitrary and, in any event, excessive.
2. The claimant's record shall be cleared of the discipline referred to in Part (1) hereof and he shall be compensated for all time lost.

FINDINGS: This Public Law Board No. 1582 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was notified to attend an investigation in La Grande, Oregon on May 18, 1989 for an investigation and hearing on charges that he was allegedly absent without proper authority at Pendleton, Oregon on April 18, 19, 20 and 21, 1989 while he was employed as Section Foreman on Section No. 6634 with assigned work hours of 7:00 a.m. to 3:30 p.m. PDT.

Pursuant to the investigation the claimant was found guilty and was assessed a 30 day suspension. The Board has studied the transcript of the investigation.

The Union objected to the claimant's personal record being introduced into the hearing record. The Carrier advised that the claimant's personal record would not be used to determine whether the claimant violated any rule but would only be used to determine the amount of discipline, if any, which should be assessed. This is proper and has been consistently held to be so.

District Truck Driver B. J. Lamb, Pendleton District, testified that his headquarters were the same as the claimants, and claimant was not present for work on April 17. He stated the claimant had called him that morning and asked him to report to Mr. Flynn, the claimant's supervisor, and inform him and his men he would not be able to be at work that morning. He stated this was the morning of the 18th, but the claimant was also not there on the morning of the 17th. He stated the claimant also asked him to request Mr. Flynn to give him four days of vacation, but Mr. Flynn said he could not do so.

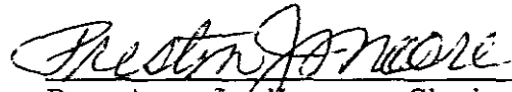
Mr. Flynn, Manager of Track Maintenance testified that because of the work load at Pendleton, he could not allow the claimant to have the four days of vacation time.

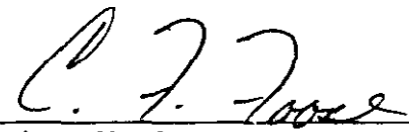
The Union also contended that the charges against the claimant were not precise. The wording of the charges indicates claimant was charged with being absent without leave. In his own testimony the claimant admitted he was absent without leave of permission.

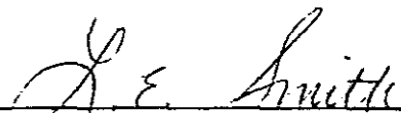
The claimant testified he was in jail on the 17th but stated he was released on the 18th. There is no excuse for the claimant not coming to work or calling in. Calling another employee and asking him to request vacation time is inadequate.

Under the circumstances the Board finds no justification to set the discipline aside.

AWARD: Claim denied.


Preston J. Moore, Chairman


Union Member


Carrier Member